**A.P.S. Production/A. Pimental Steel, a Single Employer *and* Iron Workers Local 7, International Association of Bridge, Structural and Ornamental Iron Workers, AFL–CIO.** Cases 1–CA–34360 and 1–CA–34821

September 30, 1998

ORDER DENYING MOTION FOR SUMMARY JUDGMENT AND REMANDING

BY MEMBERS FOX, LIEBMAN, AND HURTGEN

Upon charges filed by the Union, Iron Workers Local 7, International Association of Bridge, Structural and Ornamental Iron Workers, AFL–CIO, the General Counsel of the National Labor Relations Board issued an order consolidating cases and consolidated complaint on August 27, 1997, against A.P.S. Production and A. Pimental Steel, the Respondent, alleging that the entities are a single employer that has violated Section 8(a)(1) and (3) of the National Labor Relations Act. Copies of the charges and the complaint were properly served on the Respondent.[1] The Respondent did not file an answer to the complaint within the 14-day time period set forth in Section 102.20 of the Board's Rules and Regulations.[2] On September 24, 1997, the Respondent, acting pro se, filed an unsigned letter dated September 23 which purported to answer the allegations of the complaint.

On January 27, 1998, the General Counsel filed a Motion to Transfer Proceeding to the Board and for Summary Judgment, dated January 21, 1998, with exhibits attached. On January 28, 1998, the Board issued an order transferring proceedings to the Board and a Notice to Show Cause why the motion should not be granted. On January 22, 1998, the Respondent filed an amended answer to the complaint and on February 11, 1998, the Respondent filed a response to the Notice to Show Cause.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

According to the Motion for Summary Judgment and its attached exhibits, the August 27, 1997 consolidated complaint was duly served on the Respondent alleging that the Respondent unlawfully interrogated employees about their union sentiments, impliedly promised benefits, "impliedly interrogated" employees about union activities, and laid off employees Bernard Condo Jr. and Gary Keresey for unlawful reasons.

On September 18, 1997, Counsel for the General Counsel informed the Respondent that an answer to the consolidated complaint had not been received, that the time to file an answer was being extended to September 25, 1997, and that if no answer was filed with the Region by that deadline, a motion for summary judgment would be filed.

On September 24, 1997, the Respondent filed an answer that enumerated the paragraphs of the complaint and admitted certain allegations, denied certain allegations, and indicated that it did not understand the remaining allegations. The answer was not signed or served as required by Section 102.21 of the Board's Rules and Regulations.[3]

On September 25, 1997, November 5, 1997, and January 8, 1998, Counsel for the General Counsel wrote to the Respondent detailing the deficiencies in its answer and enclosing a copy of the relevant rules. Counsel for the General Counsel also notified the Respondent that if an amended answer correcting the deficiencies was not received by January 14, 1998, the Regional Director would file a motion for summary judgment.

The instant Motion for Summary Judgment is dated on January 21, 1998. Thereafter, on January 22, 1998, the Regional Director received an amended answer signed by the Respondent[4] with a cover letter from Arthur Pimental that states:

> I am in receipt of your letter. I mailed out the amended answer on Jan. 6, 1998. I don't know why you did not receive it. I will fax it to you. I will see you Feb. 19th.

As noted above, the Respondent also filed a timely response to the Notice to Show Cause indicating that he was acting pro se, that, "because of inexperiance [sic] to minor details of signature, I was denied a hearing," and requesting a hearing.

Counsel for the General Counsel argues that the motion for summary judgment is appropriate, asserting that the Region has no record of having received the amended answer on January 6 and that the Respondent was given ample notice of the deficiencies in its original answer and did not contact the Regional Office until multiple deadline extensions had passed. In addition, the General Counsel argues that the amended answer still does not

[1] The original charge in Case 1–CA–34360, filed July 23, 1996, was amended on August 21, 1997. Although there may be a question as to whether the original charge was properly served on the Respondent, there is no doubt that the Respondent received the amended charge.

[2] Sec. 102.20 of the Board's Rules and Regulations states in full:

> The respondent shall, within 14 days from the service of the complaint, file an answer thereto. The respondent shall specifically admit, deny, or explain each of the facts alleged in the complaint, unless the respondent is without knowledge, in which case the respondent shall so state, such statement operating as a denial. All allegations in the complaint, if no answer is filed, or any allegations in the complaint not specifically denied or explained in the answer filed, unless the respondent shall state in the answer that he is without knowledge, shall be deemed to be admitted to be true and shall be so found by the Board unless good cause is shown.

[3] Sec. 102.21 of the Rules and Regulations provides in pertinent part:

> An original and four copies of the answer shall be filed with the Regional Director issuing the complaint. Immediately upon the filing of his answer, respondent shall serve a copy thereof on the other parties. . . . A party who is not represented by an attorney shall sign his answer and state his address. . . .

[4] The amended answer consisted of the original answer plus Pimental's signature.

comport with the requirements of the Board's Rules and Regulations that they be served on the parties.[5]

The Board, having duly considered this matter, finds that, given the Respondent's pro se status, summary judgment is not appropriate here. The Respondent's original and amended answers specifically deny the Section 8(a)(1) and (3) allegations that the Respondent unlawfully interrogated employees, promised benefits, and laid off employees Condo and Keresey because of their union activities. Although the original answer was unsigned, the Board's rules permit a respondent to amend its answer at any time prior to trial.[6] The Board typically has shown some leniency toward a pro se litigant's efforts to comply with our procedural rules. Because the answer and amended answer were filed without benefit benefit of counsel, because they contain, inter alia, clear and specific denials of the unfair labor practice allegations of the complaint, and because the Respondent has made an effort to cure the deficiencies of the original answer, we will not preclude a hearing on the merits simply because of the Respondent's failure to comply with all our procedural rules.[7]

Accordingly, the General Counsel's Motion for Summary Judgment is denied.

ORDER

It is ordered that the General Counsel's Motion for Summary Judgment is denied.

IT IS FURTHER ORDERED that this proceeding is remanded to the Regional Director for Region 1 for further appropriate action.

[5] See Sec. 102.21, above.

[6] Sec. 102.23 or the Board's Rules and Regulations provides, in pertinent part, "Amendment.—The respondent may amend his answer at any time prior to the hearing."

[7] See, e.g., *Dismantlement Consultants,* 312 NLRB 650, 651 fn.6 (1993); *Tri–Way Security*, 310 NLRB 1222, 1223 fn. 5 (1993); *Acme Building Maintenance*, 307 NLRB 358 at fn. 6 (1992); and *Steeltec Inc*., 302 NLRB 980 (1991).